

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/563,207
Applicant : Michael A. LEVY
Filed : June 30, 2006
TC/A.U. : 1625
Examiner : Binta M. Robinson

Docket No. : 3165-140
Customer No. : 6449
Confirmation No. : 8175

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants request that the Office revise, if necessary, the Patent Term Adjustment (PTA) calculated in connection with the above-identified now allowed U.S. Patent Application. The number of days calculated by the Office was 213 based on a 35 U.S.C. 371 date of June 30, 2006. However, Applicant's representative filed a declaration signed by the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date on April 19, 2006. A PTO date stamped postcard acknowledging receipt of the application declaration was received by us for the April 19, 2006 submission. On May 1, 2006, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 in which the only requirement identified as missing was the inventor's declaration. On June 30, 2006, Applicant's representative responded to the Notification of Missing Requirements under 35 U.S.C. 371 by submitting a copy of the same inventor

07/27/2010 CKHLOK 00000009 022135 10563207
01 FC:1455 200.00 DA

declaration and a copy of the PTO postcard dated April 19, 2006 and requested that the Notification be withdrawn. This declaration, which was identical to the April 19, 2006 submission, was accepted on May 1, 2007. However, the application was given a 371 date of June 30, 2006. Applicant believes that the application deserves the benefit of the April 19, 2006 date because all requirements under 35 U.S.C. 371 were met on that date.

Therefore, the patent term adjustment should be calculated from the April 19, 2006 date which would increase the calculated patent term adjustment to 285 days under 37 C.F.R. § 1.703.

371 date = April 19, 2006
14 month date = June 19, 2007
Three year date = April 19, 2009
First Office Action = March 24, 2008
US PTO Delays = 279 + 23 = 302 days
Applicant delay = 17 days (calculated by PTO)
Total PTA = US PTO Delay – Applicant Delay = 302-
17 = **285 days¹**.

Therefore, Applicant requests appropriate correction of the PTA. Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

¹ Because this application will issue after March 2, 2010, Applicants expect that the PTA will be further adjusted based on the recent decision in *Wyeth v. Dudas*, and it is therefore unnecessary to raise that issue in this petition.

Respectfully submitted,

By /Robert B. Murray/

Robert B. Murray
Attorney for Applicant
Registration No. 22,980
ROTHWELL, FIGG, ERNST & MANBECK
1425 K. Street, Suite 800
Washington, D.C. 20005
Telephone: (202) 783-6040

RBM/AHH
1704667